

## § 1316.79

be furnished the newspaper advertisements required by §1316.75. The Forfeiture Counsel of DEA shall make applications to the U.S. District Courts to place property in official DEA use.

(Authority: Sec. 610, 46 Stat. 755 (19 U.S.C. 1610); Pub. L. 98-473, Pub. L. 98-573)

[36 FR 7820, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973 and amended at 44 FR 56324, Oct. 1, 1979; 49 FR 1178, Jan. 10, 1984; 49 FR 32174, Aug. 13, 1984; 49 FR 50643, Dec. 31, 1984; 56 FR 8686, Mar. 1, 1991]

### § 1316.79 Petitions for remission or mitigation of forfeiture.

(a) Any person interested in any property which has been seized, or forfeited either administratively or by court proceedings, may file a petition for remission or mitigation of the forfeiture. Such petition shall be filed in triplicate with the DEA Asset Forfeiture Section or Special Agent-in-Charge of the DEA or FBI, depending upon which agency seized the property, for the judicial district in which the proceeding for forfeiture is brought. It shall be addressed to the Director of the FBI or the Administrator of the DEA, depending upon which agency seized the property, if the property is subject to administrative forfeiture pursuant to §1316.77, and addressed to the Attorney General if the property is subject to judicial forfeiture pursuant to §1316.78. The petition must be executed and sworn to by the person alleging interest in the property.

(b) The petition shall include the following: (1) A complete description of the property, including motor and serial numbers, if any, and the date and place of seizure; (2) the petitioner's interest in the property, which shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and, (3) the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(c) Where the petition is for restoration of the proceeds of sale, or for value of the property placed in official use, it must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration of condemnation of forfeiture and was

## 21 CFR Ch. II (4-1-10 Edition)

in such circumstances as prevented him from knowing of the same.

(Authority: Secs. 613, 618, 46 Stat. 756, 757, as amended (19 U.S.C. 1613, 1618; 28 U.S.C. 509 and 510; 21 U.S.C. 871 and 881(d)); Pub. L. 98-473, Pub. L. 98-573)

[36 FR 7820, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 48 FR 35088, Aug. 3, 1983; 49 FR 1178, Jan. 10, 1984; 49 FR 50643, Dec. 31, 1984; 56 FR 8686, Mar. 1, 1991]

### § 1316.80 Time for filing petitions.

(a) In order to be considered as seasonably filed, a petition for remission or mitigation of forfeiture should be filed within 30 days of the receipt of the notice of seizure. If a petition for remission or mitigation of forfeiture has not been received within 30 days of the notice of seizure, the property will either be placed in official service or sold as soon as it is forfeited. Once property is placed in official use, or is sold, a petition for remission or mitigation of forfeiture can no longer be accepted.

(b) A petition for restoration of proceeds of sale, or for the value of property placed in official use, must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

(Authority: Secs. 613, 618, 46 Stat. 756, 757, as amended (19 U.S.C. 1613, 1618); Pub. L. 98-473, Pub. L. 98-573)

[36 FR 7820, Apr. 24, 1971. Redesignated at 38 FR 26609, Sept. 24, 1973, and amended at 49 FR 50643, Dec. 31, 1984]

### § 1316.81 Handling of petitions.

Upon receipt of a petition, the custodian or DEA Asset Forfeiture System shall request an appropriate investigation. The petition and the report of investigation shall be forwarded to the Director of the FBI or to the Administrator of the DEA, depending upon which agency seized the property. If the petition involves a case which has been referred to the U.S. Attorney for the institution of court proceedings, the custodian or DEA Asset Forfeiture System shall transmit the petition to

the U.S. Attorney for the judicial district in which the proceeding for forfeiture is brought. He shall notify the petitioner of this action.

(Authority: 28 U.S.C. 509 and 510; 21 U.S.C. 871 and 881(d); Pub. L. 98-473, Pub. L. 98-573)

[48 FR 35088, Aug. 3, 1983, as amended at 49 FR 1178, Jan. 10, 1984; 49 FR 50643, Dec. 31, 1984; 56 FR 8686, Mar. 1, 1991; 62 FR 13970, Mar. 24, 1997]

### Subpart F—Expedited Forfeiture Proceedings for Certain Property

AUTHORITY: 21 U.S.C. 822, 871, 872, 880, 881, 881-1, 883, 958, 965; 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618; 28 U.S.C. 509, 510; Pub. L. No. 100-690, sec. 6079, 6080.

SOURCE: 54 FR 37610, Sept. 11, 1989, unless otherwise noted.

#### § 1316.90 Purpose and scope.

(a) The following definitions, regulations, and criteria are designed to establish and implement procedures required by sections 6079 and 6080 of the Anti-Drug Abuse Act of 1988, Public Law No. 100-690 (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances, and conveyances seized for drug-related offenses. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities gen-

erally considered to be subject to further distribution.

(b) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination, property sufficient to preserve the government's vested interest for purposes of the administrative forfeiture.

(c) Section 6080 requires a similar expedited review by the Attorney General or his representative in those instances where a conveyance is being forfeited in a civil judicial proceeding following its seizure for a drug-related offense.

#### § 1316.91 Definitions.

As used in this subpart, the following terms shall have the meanings specified:

(a) The term *Appraised Value* means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(b) The term *Commercial Fishing Industry Vessel* means a vessel that:

(1) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(2) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or